Supreme Court, U.S.
FILED

07-49 JUL 11 2007

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No.

In The

SUPREME COURT OF THE UNITED STATES

In Re Son Hui Choi

On Petition For Writ of Mandamus
To The Supreme Court of Virginia

PETITION FOR THE WRIT OF MANDAMUS AND/OR PROHIBITION AND/OR INJUNCTION

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Washington DC 20016
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QUESTIONS PRESENTED

1. Whether the courts of adjacent suburban Virginia may refuse to give full faith and credit to a judgment from the District of Columbia, in violation of Article IV, Section 1 of the Constitution and the Full Faith and Credit Act, 28 U.S.C. § 1738, one of our oldest and most respected statutes?

2. Whether the courts of Virginia, which has one of the nation's strictest recordation acts that gives priority to a judgment recorded before an earlier deed of conveyance (that is, however, not recorded until later,) may avoid giving full faith and credit to a District of Columbia judgment by comparing its date of recordation, not to the later-recorded transaction challenged but rather by comparing the judgment from the District of Columbia instead to the date of recordation of an underlying deed of trust pursuant to which deed of trust the challenged deed of conveyance, executed pursuant to a foreclosure, was issued?

3. Whether, when the said type of comparison with the underlying deed of trust rather than the deed of conveyance that is challenged has never been made to defeat any Virginia judgment creditor in the history of Virginia, the radical and hitherto unheard of type of comparison is a mere pretext to avoid giving that full faith and credit to the District of Columbia judgment which the Constitution and the Full Faith and Credit Act require?

4 Whether, in such a case, this Court should exercise its jurisdiction to mandate full faith and credit for the District of Columbia judgment and prohibit the discrimination exhibited by the failure to give full faith and credit and enjoin any further such behavior against the District of Columbia judgment creditor, the Petitioner, who recorded her judgment prior to the only deed and transaction she asks be set aside and held void, the one not recorded until after her judgment?

PARTIES TO THE PROCEEDING

Son Hui Choi, Petitioner, 908 President Street, Brooklyn, NY 11215-1604

The Justices of the Supreme Court of Virginia as signed for by the Clerk of that Court, Patricia L. Harrington, through her Deputy Clerk, Ebby Edwards, Respondents, 5th floor 100 N. 9th Street, Richmond VA 23219

The Honorable Michael P. McWeeny, Chief Judge, The Honorable Davit T. Stitt, and The Honorable Leslie M. Alden, Judges, Circuit Court of Fairfax County (Virginia) Respondents, 4110 Chain Bridge Road, Fairfax VA 22030.

There is no remedy available to the petitioner in the courts of Virginia or elsewhere other than this Court.. Her petition for an appeal to the Virginia Supreme Court was denied without examination or comment. Demurrers were granted against her twice, the second time without any supporting reasoning or discussion and the first time with a single reason with not a shred of supporting authority in the face of abundantly cited contrary authority. That order was then not sent to her counsel in time to pursue an interlocutory appeal and her subsequent petition for mandamus to the Virginia Supreme Court was denied without comment.

CORPORATE DISCLOSURE STATEMENT

Petitioner, Son Hui Choi, is an individual with no corporate affiliations other than her former newsstand company that is now defunct,

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PETITION FOR THE WRIT OF MANDAMUS AND/OR PROHIBITION AND/OR INJUNCTION

Petitioner, Son Hui Choi, by John D. Hemenway, her attorney, petitions this Court to issue a writ of mandamus and/or prohibition and/or injunction to the Honorable Judges of the Supreme Court of Virginia and to the Honorable Michael P. McWeeny, Chief Judge of, and the Honorable David T. Stitt, and the Honorable Leslie M. Alden, Judges of the Circuit Court of Fairfax County, Virginia.

I. No Reported Opinions

There are not reported opinions; orders at issue are reproduced in the appendix.

II. JURISDICTION

The All Writs Act, 28 U.S.C.§ 1651(a), and Rule 30 of the Court confer jurisdiction from an order of April 12, 2007.

III. CONSTITUTIONAL PROVISIONS AND STATUTES

A. Constitutional Provision

Article IV, Section 1 of the Constitution

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

B. Statutes

Full Faith and Credit Act 28 U.S.C. § 1738

> * * * *
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Virginia Recordation Acts, Code of Virginia 1950 § 55-96

§ 55-96. Contracts, etc., void as to creditors and purchasers until recorded .... — A.1. Every ... (ii) deed conveying any such estate or term, ...shall be void as to all ... lien creditors, until and except from the time it is duly admitted to record in the county or city wherein the property embraced in such ... deed ... may be.

IV. STATEMENT OF THE CASE

This petition is filed pursuant to the All Writs Act and the Full Faith and Credit provision of the Constitution to have this Court command the courts of Virginia to give the same full faith and credit to the petitioner's District of Columbia judgment, as duly enrolled in the circuit court and land records of Fairfax County, Virginia, adjacent to the District of Columbia, that they give to such judgments obtained in Virginia and recorded in its land records, and have for over two hundred years, and particularly since the enactment of the Virginia Recordation Acts in their modern form in 1819.

On April 12, 2007, the Clerk of the Supreme Court of Virginia issued an order denying the present petitioner's petition for an appeal to that court of a judgment below in the Circuit Court of Fairfax County, Virginia. There was no opinion and the order merely stated that the Supreme Court of Virginia could find no error in the proceedings below.

The rejected petition for an appeal to the Virginia Supreme Court was taken by the petitioner Choi from a Final Order by the Honorable David T. Stitt of the Fairfax County Circuit Court that was entered on October 16, 2006. It too, gave no reasons and no authority.

Since the petitioner had sued *in rem* in her attempt to enforce her judgment, all parties involved in the deed of conveyance transaction pursuant to the foreclosure and all parties involved in all transfers of the property subsequent to that transaction were named as respondents in the equity proceeding. As a result there were two demurrer hearings, involving different respondent parties.

The order resulting from the first demurrer, by the Honorable Leslie Alden of the Circuit Court of Fairfax County, Virginia, is the only Order from the Virginia courts giving any reasoning, and that reasoning was modest. This was an order of a single page, not counting the signature block, dated November 21, 2005. It granted the demurrer to the Petitioner Choi's Bill of Complaint on the grounds that the underlying deed of trust had a recordation date prior to that of the petitioner Choi's recordation of her judgment. It made no reference to the recordation date of the deed of conveyance granted pursuant to the foreclosure sale which was the deed that the petitioner Choi had asked to be set aside under the statute set out above because the recordation date of that deed of conveyance was 22 days after the date of recordation of Petitioner Choi's judgment.

This order by Judge Alden, as can be seen, cites no statutory or case law authority and gives no actual reasoning to support its decrees. Since the Virginia courts chose not to discuss the Recordation Acts or any other statutory or case law authority in their orders, to complete a statement of the case we must attach at least one brief from the Fairfax Circuit Court proceeding setting out the authority. Suffice it to say that in the history of Virginia law, since the enactment of the Recordation Acts in 1819, there is no case nor any recorded instance of a judgment creditor recording their judgment prior to a deed of conveyance and then having the courts compare the date of their recordation of their judgment lien, not to the deed of conveyance sought to be set aside, but rather to an underlying deed of trust whose validity was not challenged and was not at issue. There is a good deal

of authority saying that the clear language of the statute as set out above must be heeded.

The issue of full faith and credit was raised by the petitioner when she petitioned for her appeal to the Virginia Supreme Court and was denied it. The refusal to give full faith and credit did not become apparent until the order ignoring the long-standing law of Virginia for Virginia judgment lien creditors was issued from which petitioner took her appeal. In her appellate briefing the petitioner stated:

> There also should be some concern here to see that a District of Columbia judgment is given full faith and credit under the Federal Constitution, Article IV, Section 1, and laws such as the Full Faith and Credit Act, 28 U.S.C. § 1738. The inconsistency of these lower court rulings with dozens of decisions by this Court for over a century and three quarters should heighten the concern over the proper treatment of one seeking to enforce a District of Columbia judgment in Virginia. "An empire," Joyce's Stephen Hero noted, "is always strongest at its borders."

This federal authority, like all the other law cited by petitioner, was completely ignored by the Virginia court.

Petitioner Choi had a small, newsstand business in a lobby of an office complex in the nation's capital. She fell ill and had to sell it to a purchaser, a Mrs. Desai, who made the purchase with a note upon which she never paid a cent. After fruitless attempts to collect and settle, Mrs. Choi sued Mrs Desai and, after discovery, was able to compel a consent judgment. She then enrolled that judgment in Virginia, where Mrs. Desai had represented that she owned the real estate in question. In the meantime Mrs. Desai had been foreclosed upon with regard to that property and a deed of conveyance had been granted by one of the trustees to the purchaser of the property at the foreclosure sale. For unknown reasons the purchasers at the foreclosure sale did not record their deed of conveyance until 22 days after the

petitioner Choi had recorded her judgment, which is a modest one, less than the value of the property over and above the payoff of the deed of trust.

V. REASONS FOR ALLOWANCE OF THE WRITS

1. The issues of involved are of great public importance and of exceptional character because the principles of Article IV Section 1 and the Full Faith and Credit Act are foundation principles of our Republic. To allow a humble judgment creditor, with a modest judgment, arrayed against powerful local interests, to have her judgment from the District of Columbia be treated any less than such judgments from Virginia courts have been treated for over 200 years in defiance of the clear language of the state's recordation acts is to breach this fundamental law of the country.

2. At a time when our foreign policy has as one its four cardinal principles the spreading of the "rule of law," it is of exceptional public importance that that same rule of law be observed in the environs of our nation's capital. It is an exceptionally important element of our nation's character that a humble litigant and judgment lienholder, particularly one that is a member of a minority group, be accorded the same treatment, in seeking to enroll a District of Columbia judgment in nearby Virginia, that is and has been for as long as Virginia law has existed, accorded to Virginia residents.

3. The language of the Constitution as amplified by the Full Faith and Credit Act is clear. The judgment of Mrs. Choi should have been given the same effect as it would have been given had she sought to enforce it against real estate in the District of Columbia. Since she sought to enforce it by enrolling it in the Circuit Court of Fairfax County, Virginia and then getting it recorded in the land records there as a judgment lien against the real estate in question, it should then be given the exact same effect as if it were a Virginia judgment originally. The language of the Virginia Recordation Acts is equally clear. If a deed of conveyance is obtained but then not recorded (in this case for almost 10 months) until after a judgment lien is perfected by

recordation, then the first recorded judgment lien prevails. The prior obtained but later recorded deed of conveyance has no existence as against the judgment lien; it is a nullity with regard to the judgment lien. The discrimination against Mrs. Choi in this case by the Virginia courts is a failure to obey the Constitution and the Full Faith and Credit Act with regard to a humble litigant who deserves to have the benefit of the rule of law, and not be discriminated against because she obtained her judgment originally in the nation's capital.

VI. CONCLUSION

The writs sought should be issued. The Virginia judges and courts should be commanded to honor petitioner Choi's judgment as if were originally from a Virginia court and set aside the deed of conveyance in question as against her judgment and to sell the property to satisfy her judgment and the costs of her suit and to give her District of Columbia judgment the full faith and credit it is entitled to.

Respectfully submitted,

John D. Hemenway
Counsel for Petitioner
Hemenway & Associates
4816 Rodman Street, NW
Washington DC 20016
(202) 244-4819

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 12th day of April, 2007.

Son Hui Choi, Appellant,

Against

Record No. 070145
Circuit Court No. 2005-2702

Raj Richardson, et al., Appellees.

From the Circuit Court of Fairfax County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy, Teste:

Patricia L. Harrington, Clerk
By: /s/ Ebby Edwards
Deputy Clerk

Virginia:
IN THE CIRCUIT COURT OF FAIRFAX

Son Hui Choi, Plaintiff,
v. Ch. No. 2005-2702
Raj Richardson, et al., Defendants

FINAL ORDER

This matter is before the Court on the Demurrers of George Mason Mortgage, LLC, D. Gene Merrill, Trustee, Daniel V. Lawson, Trustee, Raj Richardson and Lily F. Richardson and Wade B. Dowdle and Rodney B. Dowdle, and the oppositions and replies thereto.

Upon consideration of these submissions, and the argument of counsel in open court on October 13, 2006, it is this 13th day of October 2006,

ORDERED that the Demurrers are hereby sustained, without further leave to amend.

THIS MATTER IS FINAL.

Entered: 13 Oct. 2006 /s/ D.T. Stitt
David T. Stitt, Circuit Court Judge

Virginia: IN THE CIRCUIT COURT OF FAIRFAX

Son Hui Choi, Plaintiff,

v. Chancery. No. 2005-2702

Wade B. Dowdle, et al., Defendants

ORDER

This matter came before the Court on October 28, 2005 on the Demurrer of Respondents Chris Beatley (Trustee), Lloyd A. Martin II (Trustee), Robert K. Harwood (Trustee). The Demurrer alleged that the Complainant's Third Amended Bill of Complaint failed to state a claim upon which relief may be granted and that the named Respondents were not necessary parties. After hearing counsels' arguments, it is hereby

ORDERED that

1. The Demurrer of Beatley, et al. is SUSTAINED because the Complainant has failed to state a claim upon which relief may be granted. Specifically, the Complainant may not set aside a foreclosure sale on a superior Deed of Trust because the Complainant's lien was inferior to the Deed of Trust.

2. The Demurrer of Beatley, et al. is SUSTAINED because the named Respondents were not necessary and proper parties to this suit.

The Complainant's Request for leave to amend is DENIED.

This cause is CONTINUED

ENTERED November 21, 2005 /s/ Leslie Alden
Judge Leslie M. Alden

As a copy of this order has been mailed to all counsel, endorsement of this order by counsel of record for the parties is waived in the discretion of the court pursuant to rule 1:13 of the Supreme Court of Virginia. *(mailed Vernon L. Butz, 12/21/05 to counsel for Complainant; received December 23, 2005)*

Commonwealth of Virginia
Circuit Court of Fairfax County
Abstract of Judgment

Judgment No. 392115 Book 00116 Page [blank] Homestead [blank]

JUDGEMENT INFO
Case File No. L085602 Date of Judgment 3/1/2005
Docket _Date_Time) 4/12/2005 10:28:09 AM
Judgment_Doc_Type J

WHERE RENDERED
Superior Court of the District of Columbia

PARTIES REQUEST JOINTLY THAT THIS COURT ENTER THIS CONSENT TO JUDGMENT ON BEHALF OF THE PLAINTIFF, SON HUI CHOI AGAINST THE DEFENDANTS HUNSA Y. DEESAI AND POWER NEWSSTAND LLC IN THE TOAL [sic] amount of 67,356.00

PLAINTIFF_NAME
Choi, Son Hui Firm_Flag N

DEFENDANT_NAME
Desai, Hansa Y SOCIAL_SECURITY [blank] ADDRESS 12324 Coleraine Court Reston Virginia 20191
Desai, Hansa Y SOCIAL_SECURITY [blank] ADDRESS 12324 Coleraine Court Reston Virginia 20191
Power Newsstand LLC SOCIAL SECURITY [blank] ADDRESS 12324 Coleraine Court Reston Virginia 20191

ATTORNEY NAME
Laurence A Elgin Attorney type P

Fairfax County Land Records
Cover Sheet

Instruments
Trustees Deed
Grantor(s)
Beatley, Chris_I_N
Grantee(s)
Dowdle, Wade B_I_N, Dowdle Rodney B_I_N

Consideration	396,000.00	Consideration %	100
Tax Exemption		Amount Not Taxed	
DEM Number		TaxMapNumber	026-1/16/0001
Original Book		Original Page	

Title Company Excel Title Corporation
Title Case JC 11838-05
Property Descr. Stratton Woods, Section 1, Lot 1
Certified No Copies 0 Page Range

05/02/2005

V I R G I N I A :
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SON HUI CHOI,

Complainant,

vs.

Chancery No. 2005-2702
WADE B. DOWDLE, et al.

Respondents.

OPPOSITION TO DEMURRER

In *Jones v. Folks*, 149 Va. 140, 140 S.E. 126, 127 (1927) the adoption of the Recordation Acts, or Registration Acts, in the precursor of their present form, is set out: "The Revised Code of 1819, c. 99, § 4," the opinion says, "provided:"

> "All deeds of trust and mortgages whatsoever which shall hereafter be made and executed, shall be void, as to all creditors and subsequent purchasers for valuable consideration, without notice, unless they shall be acknowledged or proved, and lodged with the clerk to be recorded.***"

By 1879, sixty years later, this language had been revised to read as follows:

> "every such contract, every deed conveying such estate or term, and every deed of gift or deed of trust or mortgage conveying real estate or goods and chattels shall be void as to creditors and

> subsequent purchasers for valuable consideration without notice, until and except from the time it is duly admitted to record in the county or corporation wherein the property embraced in such contract or deed may be." As quoted in *Young v. Devries*, 31 Gratt. (72 Va.) 304, 308 (1879)

In *Young* a judgment creditor had docketed his judgment prior to the recordation by a number of grantees of the judgment debtor of their conveyances from the judgment debtor. Those conveyances that were in writing were voided and those that were only oral were not, an anomaly that was later corrected by the legislature. The point here is that by 1879 the language of the Recordation or Registration Acts had assumed very nearly its present form. Here is how it reads today:

> § 55-96. Contracts, etc., void as to creditors and purchasers until recorded; priority of credit line deed of trust.
>
> A. 1. Every (i) such contract in writing, (ii) deed conveying any such estate or term, (iii) deed of gift, or deed of trust, or mortgage conveying real estate or goods and chattels and (iv) such bill of sale, or contract for the sale of goods and chattels, when the possession is allowed to remain with the grantor, shall be void as to all purchasers for valuable consideration without notice not parties thereto and lien creditors, until and except from the time it is duly admitted to record in the county or city wherein the property embraced in such contract, deed or bill of sale may be.

Thus, by 1879 the original references to only all mortgages and deeds of trust had been expanded to include the following separate categories of real estate transfers: (i) contracts for the sale of an estate in land for more than five years not in writing and certain written contracts for land not deeds as such (See Code §§ 55-95 and 11-1), (ii) deeds conveying estates or terms of more than five years, and (iii) deeds of gift and trust and mortgages. The main change from 1879 to the present day is to add small Roman numerals to emphasize the separate nature of the categories.

So far in this case, at the invitation of the initial demurrants, the separateness of these categories has not been heeded and the deed of trust in this case, which is in category iii, has been lumped together with a deed of conveyance from category ii. This radical departure was ruled without a shred of authority for such a conflation, either from the initial demurrants or from the court. The question is: will this radicalism continue? The present demurrer is an invitation for the Court to ignore the established law by embracing this conflation which has no support in any decided case.

In *Young* the judgment lien was recorded before the conveyances in question were made as well as before they were recorded. In a subsequent decision, however, it was made clear that it makes no difference whether the conveyances in question occurred before or after the judgment is recorded, the prior recordation of the judgment liens still prevails and enables the judgment creditor, such as Mrs. Choi is here, to void the conveyance and force rental or resale of the land. *Miller v. Kemp*, 157 Va. 178, 160 S.E. 203 (1931). The principle is very simple and is expressed clearly in the statutory language, with no need to go beyond that language. *Hart v. Haynes*, 1 Va. Dec. 201 (1877); *Eidson v. Huff*, 70 Va. (29 Gratt.) 338 (1877); *March v. Chambers*, 71 Va. (299 (1878); *Dobyns v. Waring*, 82 Va. 159 (1886).

In Michie's Jurisprudence of Virginia and West Virginia the principle that it makes no difference whether the judgment be before or after the conveyance that is sought to be voided is expressed as follows:

> But the lien of a judgment creditor reaches every interest of the judgment debtor in land which the record of the title shows that he had, either before or after the judgment was docketed, even though he has in fact transferred his interest to an innocent purchaser before the judgment was docketed, unless the record itself shows such previous transfer by a deed duly recorded. *Id.* "Judgments and Decrees", § 69

The interest of the judgment debtor, in this case the respondent Desai, that is reached so as to mandate the voiding of the conveyance to the purchaser for value, in this case the respondents Dowdle, is the judgment debtor's beneficial interest in the land. Here that amounted to some eighty-seven thousand dollars and change that Ms. Desai received when she was foreclosed upon, more than the amount of her judgment had it been paid. Sometimes this beneficial interest is described as part of the equity of redemption, but it is only the right to that which, upon redemption, is available to the judgment debtor after the deed of trust or mortgage is paid off. *Hale v. Horne*, 62 Va. (21 Gratt.) 112 (1871); *Haleys v. Williams*, 28 Va. (1 Leigh) 140 (1829); *Coutts v. Walker*, 29 Va. (2 Leigh) 268 (1830); *McClung v. Bierne*, 37 Va. (10 Leigh) 394 (1839); *Findlay v. Toncray*, 41 Va. (2 Rob.) 374 (1843); *Nickell v.Handly*, 51 Va. (10 Gratt.) 336 (1853). The complainant, Mrs. Choi, since her judgment was subsequent to the 2003 Deed of Trust, which was recorded, has only a lien upon her beneficial interest part of her equity of redemption where there is a prior deed of trust that was recorded, as there was

here. *Shurtz v. Johnson*, 69 Va. (28 Gratt.) 657 (1877); *Wytheville Crystal Ice & Dairy Co. v. Frick Co.* 96 Va. 141, 30 S.E. 491 (1898). This is only of value, of course, where the land is worth more than the balance on the deed of trust. But that was the case here.

So far as the complainant Choi is concerned, since she is a judgment creditor who recorded her judgment before the respondents Dowdle recorded the conveyance to themselves by the Trustee's Deed, title remains in the respondent Desai. *Cox v. Williams*, 183 Va. 152, 158, 31 S.E.2d 312 (1944). But that does not give the complainant Choi any claim against the debt that was paid to the holder of the 2003 deed of trust out of the proceeds of the sale to the respondents Dowdle.

Nor has the complainant ever claimed that she had any entitlement to that part of the proceeds of the sale to the Dowdles that went to pay off the prior recorded deed of trust. She has never requested that the 2003 deed of trust be set aside. The clear language of the statute is that the unrecorded conveyance, the deed of transfer that was entitled as a "Trustee's Deed" is void as against Mrs. Choi. The Court exceeds its discretion if it reaches back beyond the unrecorded deed of transfer to the recorded deed of trust and compares the latter to Mrs. Choi's judgment lien. There is no such discretion in the clear language of the statute. In fact the Bill brought by the complainant seeks no such comparison and does not ask that the 2003 deed of trust be voided or in any way interfered with. The comparison of Mrs. Choi's judgment with the 2003 deed of trust is not before the Court and, therefore, as that issue, is not within the Court's jurisdiction.

In this Court to date there has been a complete failure to distinguish between the underlying deed of trust secured obligation and that part of the equity of redemption which would have gone to Mrs. Choi had Mrs. Desai, the debtor,

redeemed at the point where, unbeknownst to Mrs. Choi, Mrs. Desai was being foreclosed upon. This is part of the clearly erroneous conflation of the deed of transfer, called the "Trustee's Deed," and the 2003 deed of trust, the former having been recorded long before the complainant's judgment lien and the latter 22 days after the complainant's judgment lien was recorded. This conceptual conflation of two separate documents has been done without a shred of authority in an apparent desire to reach a result decided upon without any reference to authority. The plain language of the statute requires that, as against Mrs. Choi, the complainant, the deed of conveyance is to be treated as void, not the underlying deed of trust.

Two cases from the briefing of the present demurrants have no relevance to the present case because they do not involve the Recordation or Registration acts. Those cases are *Abdelhaq v. Pflug*, 82 B.R. 807 (Bkrptcy E.D.Va. 1988) and another bankruptcy case that is referred to in *Abdelhaq*, *In re Rolen*, 39 B.R. 260 (Bkrptcy W.D.Va. 1983). Neither of these cases involves in any way any possible application of the Virginia Recordation or Registration Act. No judgment creditors with a prior recordation of a deed of conveyance are noted in other case and it would not matter if there were such because of federal supremacy under the Constitition. Since the Recordation Acts are unrelated to when the "hammer falls" but relate only to recordation under the specific mandate of the statute, these two bankruptcy cases have no relevance to the issues before the Court. Nor does it appear in either of the two bankruptcy cases that there was any beneficial interest of a judgment debtor to be reached.

Nor does the case of *The Ryland Group, Inc. v. Wills*, 229 Va. 459, 331 S.E.2d 399 (1985), referred to in *Abdelhaq, supra*, have any relevance to the present case. It does not in any way involve the mandate of Virginia Code § 55-96, anymore than the two bankruptcy cases do. The Recordation

Acts are a legislative mandate that operate solely because of priority of recordation and a corresponding failure to record by a party that is negligent in recording in cases such as the present one. They do not affect the rights of holders of mortgages and deeds of trust because those who have transferred property as security for a mortgage or deed of trust only have momentary seizin. There is never any ownership of that portion of the property obligated by the amount of the mortgage or deed of trust. The judgment creditor can only reach the beneficial interest owing to the judgment debtor in the position of Mrs. Desai in the instant case after the deed of trust is paid. See *Charlottesville Hardware v. Perkins*, 118 Va. 34, 86 S.E. 869 (1915). However, where, as here there was such a beneficial interest, then, purely as a creature of statute, it is as if the deed of conveyance never existed with regard to that beneficial interest. It has nothing to do with the underlying deed of trust pursuant to which the deed of conveyance was made as part of the foreclosure proceedings. So, as regards the prior-recorded judgment creditor, it has nothing to do with when the hammer fell.

In this regard also, it is to be noted, all that need be alleged is what is alleged in the complaint concerning dates of recordation and the fact that the transferees under the deed of conveyance failed to record before the complainant recorded her judgment. For these demurrers to succeed, were the law to be analyzed and applied, the demurrants would have to show that, within the Bill as filed, the Dowdles are alleged to have recorded the Trustee's Deed, as the deed of conveyance, before Mrs. Choi recorded her judgment. That they cannot do.

As it was put many years ago: "The purchaser ... can only acquire title against the lien of the judgment by recordation of the conveyance." *Hill v. Rixey*, 26 Gratt. (67 Va.) 72 (1876). Thus, as against the complainant Choi, the respondents the Dowdles, who purchased from the

respondent and previous demurrant Beatley under the Trustee's Deed, a deed of conveyance, never had title to the subject property as against Mrs. Choi since they failed to record before Mrs. Choi recorded her judgment, though they may have had ownership of the property as against the rest of the world. It is the conveyance that is focused upon, not the underlying deed of trust which empowered the trustees to make the conveyance

The present demurrants also argue as if notice made a difference. Notice does not matter where creditors, including judgment creditors, are concerned as opposed to purchasers for value without notice. This was established in the very early days of the present Recordation Acts in the well-known case of *Guerrant v. Anderson,* 4 Rand. (25 Va.) 208 (1826). There it was held:

> The error in this instruction consists either in not distinguishing between a purchaser of the rights of a creditor, from a purchaser from the debtor, or in confounding the condition of a creditor with that of a purchaser, with notice of a prior deed, and must have grown out of a misapprehension of the Statute, in relation to the subject. By the 4th section of the Act, to reduce into one the several Acts for regulating conveyances, and concerning wrongful alienations, it is declared, that all deeds of trust and mortgages whatsoever, which hereafter shall be made and executed, shall be void as to creditors, absolutely and without qualification; and as to subsequent purchasers, with the qualification. "for valuable consideration, and without notice." The words, "for valuable consideration, "in the section, certainly have no application to creditors, their

being none of any other denomination: nor have the words, "without notice." which make a part of the qualification of a purchaser to resist the unrecorded deed, any relation to a creditor, either by its position in the sentence, or its context. The sentence following this provision in the 4th section, makes this more plain, if it were necessary. Its words are, "but the same, as between the parties and their heirs, and as to all subsequent purchasers with notice thereof, or without valuable consideration, shall nevertheless be valid and binding;" omitting entirely the word "creditors" and thereby fully explaining the meaning of the provision in the section that precedes it. The 2d section in the same Act, might be resorted to for the same purpose. In that section, the words, "for valuable consideration, and without notice," are only applied to subsequent purchasers; and the provision as to creditors, is included in a substantive sentence coming afterwards, to which those words can have no application. A contrary exposition would be in conflict with both the language and intention of the Legislature. Before the words "for valuable consideration without notice" were inserted in the Act, it was the settled law of a Court of Equity, though the unrecorded deed was void at law, to postpone such subsequent purchaser, on the ground that he was guilty of a fraud in purchasing what he knew, in justice, belonged to another. Since the insertion of those words in the

> Statute, that rule has become a rule of law; but that rule was never extended by a Court of Equity to creditors, nor was it intended to be so extended by the Legislature; because, though a creditor has notice of an unrecorded deed, he commits no fraud by crediting the grantor upon his general responsibility. If, in the lawful pursuit of his rights, he gets a lien on the property by the delivery of an execution to the proper officer, as in the case before us, or otherwise, having equal equity with the party claiming under the deed, he falls within the settled rule of equity; that between parties having equal equity, he who has the law also, shall prevail. That the second instruction of the Judge, would violate this rule is perfectly clear; for, though the appellee was a purchaser and not a creditor, and in that character, in the ordinary case, would fall within the provisions of the Act in regard to purchasers, yet, being a purchaser under a sale in behalf of a creditor, he holds his rights and occupies his place in this controversy; otherwise, the rights of a creditor would be of no avail. *Id.* at 210-211

This lengthy explanation has been cited often since as establishing the distinction in the Recordation Acts between the rights of creditors and those of purchasers for value without notice. For example, in the case of *Heermans v. Montague,* 2 Va. Dec. 6, 20 S.E. 899 (1898) *Guerrant* was cited where the judgment creditor's judgment was docketed before a deed, though the deed was prior in time to the judgment and so would have prevailed in the absence of the Recordation Acts. The court held: "That deed, except from

the time that it was duly admitted to record, was absolutely void as to creditors, with or without notice." *Id.* 20 S.E. at 904. And see *Neff's Adm'r v. Newman*, 150 Va. 203, 210-211, 142 S.E. 389 (1928).

The consequence of this distinction applies in the present case. All of the arguments of the demurrants going to the facts of notice to the complainant Choi are irrelevant in the face of the clear language of the statute. This has a further consequence. While creditors are not affected by notice or lack of notice, but only by priority of recordation, the same is not true for purchasers for value. The notice of Mrs. Choi's judgment was established when her judgment was recorded 22 days prior to the Dowdle's recording the deed of conveyance to them, the Trustee's Deed. Therefore all claiming through the late-recorded deed of the Dowdles were on notice when they purchased or took their equitable interests, and, accordingly, have no defense against the voiding of the transfer to the Dowdles under the clear language of the Recordation Acts.

In *Hyson v. Dodge*, 198 Va. 792, 797, 96 S.E.2d 792, Chief Justice Hudgins pointed out that that the policy of the Recording Acts was to affect "such persons as are required to search the records to protect their own interests." See the cases cited. All of the respondents here except the original transferor and transferee, who come under the mandate of the Act because of their failure to record in a timely fashion, were required to search the public record where Mrs. Choi's judgment was recorded. They did not do so, or if they did, failed to look into the consequences of the judgment lien being recorded before the deed of conveyance.

Respectfully submitted,

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